

**Final Order Denying Refund: 01-20160614R
Individual Income Tax
For The 2015 Tax Year**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision or Final Order Denying Refund.

HOLDING

Real estate purchaser properly paid the property owner's tax liabilities pursuant to, the tax warrants attached to the purchased property, because the warrants were properly filed prior to the purchase.

ISSUE

I. Tax Administration - Tax Warrant - Sheriff Sale.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-3; IC § 6-8.1-8-2; IC § 6-8.1-8-8; Etzler v. Indiana Dep't of Revenue, 27 N.E. 3d 1085 (Ind. Ct. App. 2015).

Taxpayer protests the denial of its refund claim on the payment of tax liabilities attached to a property purchased by Taxpayer.

STATEMENT OF FACTS

Taxpayer is in the business of purchasing real estate and "flipping" the property for a profit. Taxpayer purchased property from a sheriff sale on November 4, 2015. After the purchase, Taxpayer became aware of two outstanding tax warrants attached to the property. Taxpayer paid the liabilities so that it could sell the property, and filed a refund for the same amount claiming that it should not have had to pay the liabilities. Taxpayer's refund claim was denied because the Department determined that Taxpayer was not the proper party requesting the refund. An administrative hearing was held, and this Final Order Denying Refund results. Additional facts will be supplied.

I. Tax Administration - Tax Warrant - Sheriff Sale.

DISCUSSION

Taxpayer protests the denial of the refund. The issue before the Department is whether there was an overpayment and if Taxpayer is the proper party to request a refund.

In this instance the property was owned by an individual that accumulated tax liabilities. These liabilities were not collected upon and proceeded to the warrant stages of the Department's collection process. "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." IC § 6-8.1-5-1(b). If the Department makes such proposed assessment, it "shall send the person a notice of the proposed assessment through the United States mail." Id.

The department shall demand payment as provided in, [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the forty-five (45) day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax. IC § 6-8.1-5-1(j).

"The department shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k). IC § 6-8.1-8-2 states:

(a) Except as provided in [IC 6-8.1-5-3](#) and sections 16 and 17 of this chapter, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The statutory authority for the department to levy against a person's property that is held by a financial institution.
- (5) The remedies available to the taxpayer to prevent the filing and recording of the judgment. If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk: (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and (2) no later than five (5) days after the date the department issues the warrant

When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e). The Department may levy and sell property when a tax warrant is returned uncollected. IC § 6-8.1-8-8(3). However the authority to collect on tax warrants without judicial proceedings is limited to the property in the county in which a tax warrant is issued and a judgment is created pursuant to statute setting forth procedures to issue tax warrants and obtain judgment creating liens. *Etzler v. Indiana Dep't of Revenue*, 27 N.E. 3d 1085 (Ind. Ct. App. 2015). Furthermore, the county sheriff is authorized to collect on tax warrants.

(a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. **The sheriff shall also have authority to attempt to levy on and collect the outstanding tax liability if the taxpayer does not pay the amount demanded under section 2(b) of this chapter and the taxpayer has taken an action under section 2(n) of this chapter to foreclose the lien. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases.** During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by **levying on and selling any interest in property or rights in any chose in action that the person has in the county.** The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants. IC § 6-8.1-8-3. **(Emphasis added).**

In this case, the individual and original property owner accumulated tax liabilities that resulted in four tax warrants filed with the Tippecanoe County Clerk on the following dates, August 3, 2015, December 19, 2011, and two were filed on June 3, 2015. To collect on the warrants, the Tippecanoe County Sheriff sold the property, "subject to all liens, encumbrances and easements of record," to Taxpayer on November 4, 2015. Taxpayer states that it was not aware of the two warrants filed on June 3, 2015 until it tried to sell the property. Taxpayer states that it conducted its due diligence by hiring a title search company to search for any and all outstanding liens attached to the property. The company failed to report the June 3, 2015 warrants.

Unfortunately, the Department cannot refund Taxpayer based on the failure of a title search company. According to *Etzler* and IC § 6-8.1-8-8(3) the Department is permitted to sell property on uncollected warrants as long as the warrant is properly filed in the same county as the location of the property intended to be sold. In this instance the

Department filed all four warrants in Tippecanoe County, where the property was located. All four warrants were filed prior to Sheriff sale. The sales contract signed by both the Sheriff and Taxpayer states that the purchase is responsible for all liens and encumbrances of record. Therefore, Taxpayer properly paid the outstanding liabilities on all warrants including the June 3, 2015 warrants. Taxpayer's protest on its refund denial is denied. Because the Department has determined that there was no overpayment the issue as to whether Taxpayer is the appropriate party to file a refund claim will not be addressed.

FINDING

Taxpayer's protest is denied.

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